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August 1, 2023
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN COURT OF APPEALS

A23-0431

In the Matter of the Civil Commitment of:
Joshua Lee Winsky.

ORDER OPINION

Olmsted County District Court
File No. 55-PR-22-1314

Considered and decided by Johnson, Presiding Judge; Gaïtas, Judge; and Florey, Judge.*

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Whether to adjudicate a person a sexually dangerous person (SDP) is governed by Minn. Stat. § 253D.02, subd. 16 (2022), and associated authorities. If a district court adjudicates a person an SDP, "the court shall commit the person to a secure treatment facility unless" that person shows that a less restrictive treatment program is available, willing to accept the person, and consistent with the person's treatment needs and the requirements of public safety. Minn. Stat. § 253D.07, subd. 3 (2022).

2. The findings of fact in the judgment adjudicating appellant an SDP state that appellant "failed" to show that a "lesser restrictive alternative exists" but that appellant had "convinced" the district court that appellant "is an appropriate candidate for [placement at

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

a nonsecure facility providing Community Preparation Services (CPS)]." The judgment's conclusions of law state that (a) appellant "did not prove . . . that any less restrictive treatment program is available to meet both his treatment needs and the requirements of public safety[;]" (b) appellant proved "that he has successfully completed treatment and should be afforded a less restrictive residential placement than [a secure facility;]" and (c) placement of appellant at a nonsecure CPS facility "is a less restrictive option for [appellant] and one that would meet his needs and the requirements of public safety." The district court then ordered both that appellant be "committed to a secure treatment facility" and that, because appellant "already successfully completed treatment," he "should be placed at [a nonsecure facility] with [CPS.]"

3. Appellant challenges his adjudication as an SDP. Respondent Commissioner of Human Services filed a notice of related appeal challenging the judgment's statements that appellant "should" be placed at CPS The commissioner challenges these statements in the judgment asserting they are, essentially, a directive by the district court to the commissioner to place appellant at a CPS. We reverse and remand.

4. The findings of fact and conclusions of law stating that appellant failed to show the availability of a nonsecure placement that is consistent with appellant's treatment needs and the requirements of public safety preclude the district court from committing appellant to a nonsecure facility. Minn. Stat. § 253D.07, subd. 3. The district court's directive to the commissioner—to commit appellant to a nonsecure facility—is inconsistent with appellant's failure to prove the availability of any nonsecure facility to which to commit him. It also runs afoul of the idea that statutes are not read to allow the

indirect accomplishment of what cannot be accomplished directly. *See Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 233 (Minn. 2008) (rejecting as "an absurd result and one that the legislature surely did not intend" a proposed construction of a statute that would allow a party to "accomplish indirectly" what "it can not do directly").

5. The district court ruled that appellant "should" be placed at a nonsecure CPS facility because he "successfully completed treatment" and needs to practice in the community what he learned in treatment. Our reading of the judgment leaves us unsure whether the decision to adjudicate appellant an SPD was based on the criteria in Minn. Stat. § 253D.02, subd. 16, or based, at least partially, on the district court's belief that, if it adjudicated appellant an SDP, it could direct the commissioner to place appellant at a nonsecure CPS facility. Absent clarity regarding the rationale for the district court's adjudication of appellant as an SDP, review of appellant's specific challenges to that adjudication is impractical. "A civilly committed sex offender may be placed in community preparation services only upon an order of the judicial appeal panel under section 253B.19." Minn. Stat. § 246B.01, subd. 2a (2022).

6. Because the district court's placement decision is defective, and because it is unclear whether that decision improperly affected the district court's decision to adjudicate appellant an SDP, we reverse and remand. On remand, the district court shall re-evaluate its decision to adjudicate appellant an SDP and shall do so by applying the criteria in Minn. Stat. § 253D.02, subd. 16, and associated authorities. If the district court confirms its adjudication of appellant as an SDP, it shall commit appellant to a secure facility unless

appellant satisfies the Minn. Stat. § 253D.07, subd. 3. On remand, the district court shall have discretion regarding whether to reopen the record.

IT IS HEREBY ORDERED:

1. The district court's judgment is reversed and remanded.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: August 1, 2023

BY THE COURT

/s/
Judge James Florey